

**Exhibit 43**  
**(Unsealed)**  
**(Previously Filed Under Seal as Dkt. 440)**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MINNESOTA

3 - - - - -  
4 FAIR ISAAC CORPORATION,

5 Plaintiff,

6 v. Court File No. 16-cv-1054 (WMW/DTS)

7 FEDERAL INSURANCE COMPANY,  
8 an Indiana corporation, and ACE  
9 AMERICAN INSURANCE COMPANY,  
10 a Pennsylvania corporation,

11 Defendants.  
12 - - - - -

13 VIDEO DEPOSITION

14 The following is the video deposition of  
15 NEIL J. ZOLTOWSKI, taken before Jean F. Soule,  
16 Notary Public, Registered Professional Reporter,  
17 pursuant to Notice of Taking Deposition, at the law  
18 office of Fredrikson & Byron, P.A., 200 South Sixth  
19 Street, Suite 4000, Mille Lacs Conference Room,  
20 Minneapolis, Minnesota, commencing at 8:09 a.m.,  
21 Friday, June 14, 2019.

22 \* \* \*

23 C O N F I D E N T I A L

24 ATTORNEYS' EYES ONLY  
25

EXHIBIT

43

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|--|--|
| <p>1 paragraphs -- your initial report, paragraph 30 to</p> <p>2 50 you write an opinion about the single economic</p> <p>3 unit; is that right?</p> <p>4 <b>A. Which paragraph?</b></p> <p>5 Q. I think it's beginning of paragraph</p> <p>6 30?</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. Now, have you ever provided an opinion</p> <p>9 relating to, quote, single economic unit, unquote,</p> <p>10 before?</p> <p>11 <b>A. Not in these specific terms. I have</b></p> <p>12 <b>rendered opinions related to the companies and</b></p> <p>13 <b>their -- and their constructs per se in terms of</b></p> <p>14 <b>damages and -- applicable damages to the companies</b></p> <p>15 <b>involved, but not under the terminology of a single</b></p> <p>16 <b>economic unit.</b></p> <p>17 Q. Where did that terminology come from,</p> <p>18 that phrase single economic unit, is it -- is it</p> <p>19 from a case or legal precedent?</p> <p>20 <b>A. I don't recall. It may be from a</b></p> <p>21 <b>specific case that may have included that type of</b></p> <p>22 <b>terminology.</b></p> <p>23 Q. Why don't you cite the case?</p> <p>24 <b>A. It may have just been -- may have just</b></p> <p>25 <b>been overlooked if that's the case. I just don't</b></p> <p style="text-align: right;">Page 91</p>  | <p>1 <b>that has not been used before.</b></p> <p>2 Q. I mean, have you seen it in any</p> <p>3 publication or journal or book or any other writing?</p> <p>4 <b>A. I don't recall if I have or have not.</b></p> <p>5 Q. Have you ever testified as to that</p> <p>6 concept, quote, single economic unit, unquote,</p> <p>7 before?</p> <p>8 <b>A. I have not in those terms.</b></p> <p>9 Q. Do you know of anybody who has?</p> <p>10 <b>A. I don't know.</b></p> <p>11 Q. Do you think it's strange that you're</p> <p>12 referring to this concept that has never, to your</p> <p>13 knowledge, appeared before in any case or</p> <p>14 publication?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Why not?</p> <p>17 <b>A. Because there's always new concepts</b></p> <p>18 <b>being created. I don't find that it's never been</b></p> <p>19 <b>discussed in these terms, as a single economic</b></p> <p>20 <b>unit, to be problematic.</b></p> <p>21 Q. So what are the -- what do you</p> <p>22 consider to be the consequences for purposes of</p> <p>23 your expert opinion as to whether or not defendants,</p> <p>24 the corresponding subsidiaries of both and the</p> <p>25 related Chubb entities, all of whom are</p> <p style="text-align: right;">Page 93</p>  |
| <p>1 <b>recall.</b></p> <p>2 Q. You don't actually recall that it</p> <p>3 comes from a case, do you?</p> <p>4 <b>A. I don't recall.</b></p> <p>5 Q. Okay. So it may not have been cited</p> <p>6 because it isn't based on a case?</p> <p>7 <b>A. As I stated, I don't recall. It may</b></p> <p>8 <b>have been.</b></p> <p>9 Q. Okay. I mean, is there any other</p> <p>10 expert or scholar or any other person that you are</p> <p>11 aware of who have written on this concept of,</p> <p>12 quote, single economic unit, unquote?</p> <p>13 <b>A. I don't know.</b></p> <p>14 Q. So did you create that concept out of</p> <p>15 thin air for the first time for this case?</p> <p>16 <b>A. I don't think it's a concept. Maybe</b></p> <p>17 <b>the terminology that's used, the single economic</b></p> <p>18 <b>unit might be a novel terminology, but the -- the</b></p> <p>19 <b>actual discussion and the relationship between the</b></p> <p>20 <b>parties in terms of their corporate structure and</b></p> <p>21 <b>the benefits received by each of those entities</b></p> <p>22 <b>under the, you know, umbrella as defined in this</b></p> <p>23 <b>write-up, I don't think that type of -- that type</b></p> <p>24 <b>of write-up or analysis is -- is novel. Just the</b></p> <p>25 <b>language of a single economic unit may be something</b></p> <p style="text-align: right;">Page 92</p> | <p>1 subsidiaries of an ultimate parent Chubb Limited,</p> <p>2 are a, quote, single economic unit, unquote?</p> <p>3 THE WITNESS: Could you read that back</p> <p>4 to me, please?</p> <p>5 (Whereupon, the court reporter read</p> <p>6 back the following question: "What do you consider</p> <p>7 to be the consequences for purposes of your expert</p> <p>8 opinion as to whether or not defendants,</p> <p>9 the corresponding subsidiaries of both and the</p> <p>10 related Chubb entities, all of whom are</p> <p>11 subsidiaries of an ultimate parent Chubb Limited,</p> <p>12 are a, quote, single economic unit, unquote?")</p> <p>13 THE WITNESS: I'm not sure I</p> <p>14 understand what you mean by the consequences.</p> <p>15 BY MR. FLEMING:</p> <p>16 Q. What does it matter for purposes of</p> <p>17 your expert opinion? You spent a lot of time</p> <p>18 talking about it and supporting it, and I am</p> <p>19 inquiring what does it matter, what is the</p> <p>20 consequence for purposes of your report as to</p> <p>21 whether all those entities are considered a single</p> <p>22 economic unit or not?</p> <p>23 <b>A. My understanding is that ultimately</b></p> <p>24 <b>this will be a legal question determined by the</b></p> <p>25 <b>trier of fact, but it relates to which entities</b></p> <p style="text-align: right;">Page 94</p> |

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1 would be responsible or required to pay damages as  
2 it relates to the unauthorized use of the software  
3 and the allegations as such under the causative  
4 action.  
5 Q. Are you saying that if these entities  
6 are not considered a single economic unit, for  
7 example, the defendants may not be liable for any  
8 damages caused by the writing companies, for  
9 example?  
10 A. Again, I -- this is a legal question  
11 for the trier of fact. I've simply looked at this  
12 from an economic perspective, that all of these  
13 entities are related in their reporting and  
14 reporting requirements and their choice to do so,  
15 and at the end of the day this will be a legal  
16 determination by the trier of fact as to which  
17 entities are liable for damages.  
18 Q. And tell me specifically, what do you  
19 mean that the consequence would go to the issue of  
20 what entities are required to pay damages?  
21 A. Again, this is a legal issue related  
22 to which parties would be required to pay damages.  
23 But the question I think you're asking -- I'm going  
24 to try to answer it as best I can.  
25 I understand that the defendants, the

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1 named defendants are Federal Insurance Company and  
2 ACE America Insurance Company, and as a result of  
3 that -- those circumstances, the question becomes,  
4 if those entities are found to be liable, which of  
5 the entities which fall under their corporate  
6 structure would be included in that damages  
7 quantification, and as I stated, I'm simply  
8 providing information to arm a trier of fact with  
9 an understanding of the construct or corporate  
10 structure from an economic perspective to assist in  
11 that determination.  
12 Q. Okay. So did somebody ask you to  
13 address this issue of single economic unit so that  
14 this legal issue could be addressed in the future?  
15 A. It was a discussion we had with  
16 counsel because we had a question as to the  
17 defendants who were named were, obviously, these  
18 two entities, Federal and ACE, and there are a  
19 number of entities based upon their corporate  
20 structure which, obviously, did not include that  
21 name, and we wanted to understand that corporate  
22 structure and made a determination that in order to  
23 explain it appropriately from an economic  
24 perspective that there was a relationship between  
25 all these parties that it was -- it made sense to

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1 include a section like this in this report.  
2 Q. I see. So was it your idea to include  
3 this section about single economic unit?  
4 A. I'm not sure whose idea it was. It  
5 was a discussion we had with counsel, and we  
6 brought it up that there was this issue that we  
7 from a damages perspective wanted to make sure we  
8 understood.  
9 Q. So let me see if I understand it.  
10 If instead of Federal and ACE as the  
11 named parties this case had been brought against  
12 all of the subsidiaries who are named and all of  
13 the writing companies and everybody who you  
14 mentioned in your report, if they were all as named  
15 defendants, you would not have raised this concern;  
16 is that fair?  
17 A. I don't know the answer to that  
18 question because, again, it's a legal determination  
19 related to who would be liable for the damages.  
20 But assuming that all of those who are named  
21 parties and could be named defendants and it was  
22 found that each of them was liable for unauthorized  
23 use, then, I may not have needed to include a  
24 section like this.  
25 Q. Okay. So you're -- and you're the one

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1 who raised the issue in the first instance, or you  
2 and your team?  
3 A. Well, we raised the issue of  
4 understanding the fact that there were two named  
5 defendants and there were a number of other  
6 entities that were un -- had unauthorized use of  
7 the software.  
8 Q. Okay. So, in response to that  
9 concern, you then created this concept of a, quote,  
10 single economic unit, unquote; is that fair?  
11 A. Yes, through our discussions with  
12 counsel and realizing that this would be helpful  
13 information to arm a trier of fact with, yes, we  
14 determined that this should be included in the  
15 report.  
16 Q. So did you have any concerns in doing  
17 that that there was no prior precedent or legal or  
18 scholarly basis for creating this concept of,  
19 quote, single economic unit, unquote, or was that  
20 not a concern?  
21 A. It was not a concern in that I am  
22 providing information from an economic perspective  
23 regarding the corporate structure of the  
24 defendants.  
25 Q. Okay. And just to be clear, you say

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1 from an economic perspective, you can't point me to  
2 any economic publications or any economic journals  
3 or any books by persons versed in economics that  
4 adopt or espouse or address this concept of, quote,  
5 single economic unit, unquote, correct?

6 **A. In those particular terms of a single**  
7 **economic unit, I'm not aware of anything. But the**  
8 **concept of corporate structure is not one that's --**  
9 **that economists and others have not addressed**  
10 **before.**

11 Q. That who has not addressed before?

12 **A. Economists and others, accountants,**  
13 **tax professionals.**

14 Q. You're saying they've addressed the  
15 structure of companies before?

16 **A. And I discussed some of that.**

17 Q. All right. So you go on to say that  
18 there's four different criteria or bases for  
19 determining whether there's a single economic unit;  
20 is that right?

21 **A. Is there a particular spot in my**  
22 **report you're pointing to?**

23 Q. Well, starting on page 10,  
24 paragraph 30, there's a section of your report  
25 entitled A Single Economic Unit, right?

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1 **A. That's correct.**

2 Q. And, then, you have underneath that  
3 section of your report five different subsections  
4 entitled a) Consolidation of the Financial  
5 Statements, b) Parent and Subsidiary Relationships,  
6 c) Pooling arrangements; d) Consolidated Income Tax  
7 Returns, and e) Economic Benefits of Single  
8 Economic Unit, right?

9 **A. That's correct.**

10 Q. So when I read that, I assumed that  
11 those were the factors or criteria that you were  
12 relying upon to determine whether all of these  
13 entities could be considered a single economic  
14 unit. Am I correct?

15 **A. It's information that falls under each**  
16 **of these four categories that provides support**  
17 **of -- of the fact that this is a single economic**  
18 **unit based upon the corporate structure, and the**  
19 **fifth section is more of a conclusion related to**  
20 **that information that there is a benefit that flows**  
21 **to all these subsidiaries that fall under this**  
22 **corporate structure.**

23 Q. How did you -- So they are the factors  
24 or criteria that determine whether these entities  
25 are a single economic unit, correct?

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1 **A. I wouldn't say I set out with**  
2 **criteria. I -- they may have become the factors,**  
3 **but they're the information that after our**  
4 **assessment supported that this was, in fact, a**  
5 **single economic unit from a corporate structure**  
6 **perspective.**

7 Q. So you're saying they're not criteria,  
8 but they might become the factors, is that what  
9 you're saying?

10 **A. Well, I think you -- the way your**  
11 **question is asked it makes it seem as though there**  
12 **were criteria that I started with a framework, and**  
13 **what I did was I looked at the information**  
14 **available and determined that this was the**  
15 **supporting information based upon my review and**  
16 **analysis of that information.**

17 Q. Okay. So you created this concept of  
18 a single economic unit out of whole cloth, and then  
19 you determined different factors or criteria that  
20 may assist in that determination as to whether  
21 these entities are a single economic unit, correct?

22 **A. I'm not sure if it's fair to be**  
23 **characterized that way. I think there were certain**  
24 **inputs to look into related to that single economic**  
25 **unit methodology, and I summarize those here, which**

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1 **would be the fact that they have a consolidation of**  
2 **their financial statements, from a tax perspective**  
3 **they're doing consolidated tax filings, that they**  
4 **enter into these pooling agreements where the**  
5 **members are all of their subsidiaries that are all**  
6 **related to this parent entity, and the fact that**  
7 **there are relationships between the parents and the**  
8 **subsidiaries in terms of being wholly owned or**  
9 **majority owned subsidiaries.**

10 Q. Okay. So you're comfortable calling  
11 them inputs, at least, you don't want to call them  
12 criteria or factors, but you're comfortable using  
13 the word input or inputs, right?

14 **A. And I'm not uncomfortable with the**  
15 **term criteria or factors. I just want to say I**  
16 **didn't start out with them as criteria, they**  
17 **just -- they became the criteria that led me to the**  
18 **conclusion.**

19 Q. Okay. Are they criteria today?

20 **A. If you want to term them that, I'm**  
21 **okay with that.**

22 Q. Okay. That took us a long time to get  
23 there.

24 **A. Sorry about that.**

25 Q. No, that's all right.

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